

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Plaintiffs Fund Texas Choice, The North Texas Equal Access Fund, The Lilith Fund for Reproductive Equity, Frontera Fund, The Afiya Center, West Fund, Jane’s Due Process, Clinic Access Support Network, and Dr. Ghazaleh Moayed, DO, MPH, FACOG,

Plaintiffs,

v.

KEN PAXTON, in his Official Capacity as Attorney General; et al.,

Defendants.

Civil Case No. 1:22-cv-859-RP

DECLARATION OF JOHN ATKINS

STATE OF TEXAS §

TRAVIS COUNTY §

1. My name is John Atkins. I am over the age of 18, and suffer from no legal or mental disabilities. I have personal knowledge of, and full capacity to testify about, the facts stated in this Declaration, which is provided as Exhibit A to Plaintiffs’ Response to Defendant Ken Paxton’s Motion to Quash Subpoenas (ECF 44).

2. I am Counsel at Thompson Coburn LLP. I represent Plaintiffs in the above-captioned matter. As part of my duties, I participated in the email correspondence attached to this declaration, and was cced on all emails. I also participated in a phone call on Sunday, September 25, 2022, in which Elizabeth Myers (also counsel for Plaintiffs) and I conferred with opposing counsel Amy Hilton and Will Wassdorf, both of the Office of the Attorney General, regarding, among other things, our attempts to secure General Paxton’s attendance and testimony at the preliminary injunction hearing set for September 27, 2022.

3. Exhibits A-1 through A-5 are true and correct copies of various chains of emails (some of which include some overlap) detailing the communications between counsel regarding (1) our expectation based on this Court's September 12, 2022 Order that General Paxton was, like all parties *and* their counsel, attending the preliminary injunction hearing; (2) our attempts to further secure General Paxton's attendance through a Rule 45 Subpoena by serving him through his office or his counsel; (3) our desire to avoid having to attempt to personally serve him with the Rule 45 Subpoena; (4) our repeated communications that we would serve him personally if necessary, followed by communications indicating that we *were* in fact serving him personally, but would be happy to abort that service if General Paxton agreed to accept service; and (5) the filing of affidavits of service when they were received.

4. I was copied on all of these emails and received them in the course of my representation of Plaintiffs in this matter. The copies attached as Exhibits A-1 through A-5 are true and correct copies of the emails as-sent, except with several pages of irrelevant emails prior to the relevant emails omitted.

5. I was also a participant in a telephone conversation on September 25, 2022 between counsel for Plaintiffs and counsel for General Paxton. Prior to that conversation, General Paxton's attorneys had never given an answer as to whether they would accept service of the Rule 45 Subpoena for him, nor clearly indicated that he would not be attending the hearing.

6. During that call, counsel for General Paxton claimed that the original service of the Rule 45 Subpoena on Friday September, 23, 2022 was invalid because it was served on General Paxton in his individual capacity, but was served through his Office, and that this was improper. Plaintiffs' counsel disagreed, but asked if another subpoena specifically designating him in his official capacity would be accepted through service on counsel. General Paxton's counsel indicated that they believed that, in his official capacity, he could appear at the upcoming hearing through his attorneys alone, and declined to clearly indicate whether they would accept a revised subpoena.

7. Elizabeth Myers then indicated that this meant General Paxton needed to be served personally, and Ms. Myers asked if General Paxton's counsel knew where General Paxton was so that he could be located and served. General Paxton's counsel indicated that they did not and likely would not be able to provide that information. General Paxton's counsel then indicated that she would endeavor to provide an answer regarding whether General Paxton could be served through counsel by noon on September 25, 2022.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 26, 2022.

A handwritten signature in blue ink, appearing to read "John P. Atkins", is written above a horizontal line.

John P. Atkins

EXHIBIT A-1

Myers, Elizabeth G.

From: Myers, Elizabeth G.
Sent: Friday, September 23, 2022 12:20 PM
To: Amy Hilton
Cc: Will Wassdorf; Ecklund, Jennifer R.; Leslie.Dippel@traviscountytexas.gov; Christopher Hilton; aalbright@adjtlaw.com; Lowell, Allyn J.; Hillier, Sadie; Atkins, John P.; Eric Magee; Leif Olson
Subject: Re: FTC v. Paxton - conference on motion for leave to appear remotely at PI hearing

Hi, Amy. Of course. I'm tied up in a meeting until about 1 but will ask someone in our team to send it over to you.

Sent from my iPhone

On Sep 23, 2022, at 11:13 AM, Amy Hilton <Amy.Hilton@oag.texas.gov> wrote:

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Hi Elizabeth,

Could you please send me a copy of the subpoena so I can see if we are authorized to accept it?

Thanks,
Amy

From: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>
Sent: Friday, September 23, 2022 9:03 AM
To: Amy Hilton <Amy.Hilton@oag.texas.gov>; Will Wassdorf <Will.Wassdorf@oag.texas.gov>
Cc: Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Leslie.Dippel@traviscountytexas.gov; Christopher Hilton <Christopher.Hilton@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Eric Magee <e.magee@allison-bass.com>; Leif Olson <Leif.Olson@oag.texas.gov>
Subject: RE: FTC v. Paxton - conference on motion for leave to appear remotely at PI hearing
Importance: High

Hi, Amy –

Conferring at 9 am Sunday works for us. With respect to General Paxton, I can't tell from your response below whether he is actually going to be at the hearing in person. We read Judge Pitman's order to require all parties to attend, but in an abundance of caution, we're going to issue a subpoena for General Paxton. I assume you'd like for us to serve that through you, but will you please confirm by noon today that you will accept service. Otherwise, we'll start the personal service process. I'd really prefer not to have to do that, of course.

Thanks for the quick response and the courtesy on the page limits. We'll get that motion for leave filed later today.

And 2 pm Saturday to confer works well for us. Could we do the exchange of witness and exhibits lists at 9 am on Saturday instead? Our entire team is on the road tomorrow traveling back from our annual firm meeting so a deadline tomorrow is very difficult.

Finally, you'll see this on our witness list as well, of course, but we intend to call General Paxton on Tuesday. Given Judge Pitman's order that all parties appear for the hearing on Tuesday, I'm assuming I don't need to send you a subpoena, but could you please confirm that General Paxton will be at the hearing in person? I can confirm for you that all of our clients other than Dr. Moayed and Anna Rupani will appear in person on Tuesday as well. Dr. Moayed and Ms. Rupani will be available remotely, pursuant to Judge Pitman's order on our motion for leave to allow them to appear virtually.

Thanks,

Elizabeth

Elizabeth G. Myers

emyers@thompsoncoburn.com

P: 972 629 7111

F: 972 629 7171

Thompson Coburn LLP

2100 Ross Avenue Suite 3200

Dallas, TX 75201

www.thompsoncoburn.com

From: Amy Hilton <Amy.Hilton@oag.texas.gov>

Sent: Thursday, September 22, 2022 1:05 PM

To: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Will Wassdorf
<Will.Wassdorf@oag.texas.gov>

Cc: Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Leslie.Dippel@traviscountytexas.gov;
Christopher Hilton <Christopher.Hilton@oag.texas.gov>; aalbright@aditlaw.com; Lowell, Allyn J.
<ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P.
<JAtkins@thompsoncoburn.com>; Eric Magee <e.magee@allison-bass.com>

Subject: RE: FTC v. Paxton - conference on motion for leave to appear remotely at PI hearing

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Hi Elizabeth,

The Attorney General is unopposed to Plaintiffs' page extension.

As far as exhibit and witness lists, how about the Parties agree to exchange exhibit and witness lists by 8pm tomorrow in advance of a call at 2pm on Saturday to confer?

Best,
Amy

EXHIBIT A/2

Myers, Elizabeth G.

From: Myers, Elizabeth G.
Sent: Friday, September 23, 2022 3:19 PM
To: 'Myers, Elizabeth G.'; Amy Hilton; Will Wassdorf; Christopher Hilton; Ecklund, Jennifer R.; Alexandra Albright; Atkins, John P.; Kirsten Castaneda
Subject: RE: Subpoena

Importance: High

Hi, Amy –

Since we haven't heard back and it is past 3 pm, we are starting the process of personal service of the subpoena. Please let General Paxton know that we now need to serve him personally and that we are happy to arrange a meeting with the process server if he'd prefer to do that.

Thanks,

Elizabeth

Elizabeth G. Myers

emyers@thompsoncoburn.com
P: 972 629 7111
F: 972 629 7171

Thompson Coburn LLP

2100 Ross Avenue Suite 3200
Dallas, TX 75201
www.thompsoncoburn.com

From: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>
Sent: Friday, September 23, 2022 1:00 PM
To: Amy Hilton <Amy.Hilton@oag.texas.gov>; Will Wassdorf <Will.Wassdorf@oag.texas.gov>; Christopher Hilton <christopher.hilton@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Alexandra Albright <aalbright@adjtlaw.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Kirsten Castaneda <kcastaneda@adjtlaw.com>
Subject: Subpoena

Amy -

I'm not back in front of my computer so I can't confirm that I've copied your full team on this but wanted to get this to you asap. This is the version of the subpoena that we would serve through you. And we'd tender the required witness fee through you as well or in whatever other process you'd like. I haven't included a copy of the money itself, but we'll tender, of course, to comply with the rules. If we need to serve General Paxton personally, the process server will tender the fee directly to him instead and the reference to service to you would be taken out of the subpoena.

I'm also happy to chat by phone when I free up this afternoon of that would be helpful.

Can you please let me know whether you will accept service by 3 pm central so we know whether we need to proceed with personal service this afternoon and weekend?

I'm also adding in two members of our appellate team at ADJ.

Thanks,

Elizabeth

Sent from my iPhone

EXHIBIT A/3

Myers, Elizabeth G.

From: Myers, Elizabeth G.
Sent: Friday, September 23, 2022 4:35 PM
To: 'Myers, Elizabeth G.'; Amy Hilton; Will Wassdorf; Christopher Hilton; Ecklund, Jennifer R.; Alexandra Albright; Atkins, John P.; Kirsten Castaneda
Subject: RE: Subpoena - Courtesy copy of as-served subpoena

Hi, Amy –

Our process server has informed us that General Paxton was served at his office this afternoon, through the designated process established for service there. We'll file the affidavit of service as soon as we have it, but I wanted to send you a courtesy copy of the as-served subpoena as well.

I'm about to be on a plane for several hours, but will be back online tonight if we need to discuss anything. And we'll be prepared to exchange witness and exhibits lists at 9 am tomorrow.

Best,

Elizabeth

Elizabeth G. Myers

emyers@thompsoncoburn.com

P: 972 629 7111

F: 972 629 7171

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Dallas, TX 75201

www.thompsoncoburn.com

From: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>

Sent: Friday, September 23, 2022 1:00 PM

To: Amy Hilton <Amy.Hilton@oag.texas.gov>; Will Wassdorf <Will.Wassdorf@oag.texas.gov>; Christopher Hilton <christopher.hilton@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Alexandra Albright <aalbright@adjtlaw.com>; Atkins, John P. <JATkins@thompsoncoburn.com>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: Subpoena

Amy -

I'm not back in front of my computer so I can't confirm that I've copied your full team on this but wanted to get this to you asap. This is the version of the subpoena that we would serve through you. And we'd tender the required witness fee through you as well or in whatever other process you'd like. I haven't included a copy of the money itself, but we'll tender, of course, to comply with the rules. If we need to serve General Paxton personally, the process server will tender the fee directly to him instead and the reference to service to you would be taken out of the subpoena.

I'm also happy to chat by phone when I free up this afternoon of that would be helpful.

Can you please let me know whether you will accept service by 3 pm central so we know whether we need to proceed with personal service this afternoon and weekend?

I'm also adding in two members of our appellate team at ADJ.

Thanks,

Elizabeth

Sent from my iPhone

EXHIBIT A/4

Myers, Elizabeth G.

From: Myers, Elizabeth G.
Sent: Sunday, September 25, 2022 6:50 PM
To: 'Amy Hilton'
Cc: Will Wassdorf; Ecklund, Jennifer R.; Christopher Hilton; aalbright@adjtlaw.com; Lowell, Allyn J.; Hillier, Sadie; Atkins, John P.; Leif Olson; Kirsten Castaneda
Subject: RE: FTC v. Paxton -- follow up on inquiry regarding service of subpoena (please read and respond at your earliest convenience)

Thanks, Amy. Please let me know asap if you are authorized to accept service so I can adjust our process server instructions.

With respect to the documents referenced in my declaration, I understand that you are not asserting any authenticity objections, but could you clarify whether you have any other objections to those documents? I don't have the list in front of me right now, but I believe we discussed some additional objections to those documents and I just want to be clear whether we've resolved those other issues. I'm also happy to confer again by phone tonight or tomorrow morning if it's easier to just walk back through the exhibit list again.

Elizabeth G. Myers

emyers@thompsoncoburn.com
P: 972 629 7111
F: 972 629 7171

Thompson Coburn LLP

2100 Ross Avenue Suite 3200
Dallas, TX 75201
www.thompsoncoburn.com

From: Amy Hilton <Amy.Hilton@oag.texas.gov>
Sent: Sunday, September 25, 2022 6:10 PM
To: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>
Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Christopher Hilton <Christopher.Hilton@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JATkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>
Subject: RE: FTC v. Paxton -- follow up on inquiry regarding service of subpoena (please read and respond at your earliest convenience)

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

Hi Elizabeth,

Thanks for the call this morning & thanks for your follow-up. I don't have an answer yet on my authority to accept the revised subpoena. In the meantime, I've attached revised exhibits that are hopefully more readable. For DEX 27 and DEX 30, we've tried our best but the nature of Instagram makes it difficult to capture the posts. Following up on some of our objections to Plaintiffs' exhibits: we will withdraw our objections to the declarations of any witness who Plaintiffs agree

not to call. We maintain our objections to your declaration (PEX 24), but since we're not challenging the authenticity of the exhibits cited therein, that should resolve the issue entirely.

Hope y'all arrived safely,

Amy

From: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>

Sent: Sunday, September 25, 2022 5:17 PM

To: Amy Hilton <Amy.Hilton@oag.texas.gov>

Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Christopher Hilton <Christopher.Hilton@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: FTC v. Paxton -- follow up on inquiry regarding service of subpoena (please read and respond at your earliest convenience)

Amy -

Just following up on whether you can accept service of a subpoena that is directed specifically to General Paxton in his official capacity? As I said on the phone this morning, I don't believe the prior subpoena we served on Friday was defective or that service was insufficient. But in order to resolve any and all doubts, I have another subpoena that specifically identifies General Paxton in his official capacity as the recipient. Since you represent him in that capacity in this lawsuit, can you accept service via email? Or do I need to go through the formal process of service at the OAG's office again?

Could you please let me know asap on this? I know you were trying to get an answer by noon today.

Thanks,

Elizabeth

Sent from my iPhone

On Sep 25, 2022, at 11:58 AM, Myers, Elizabeth G. <EMYERS@thompsoncoburn.com> wrote:

Amy and Will –

Thanks for the productive call this morning. I'm writing to confirm that we have no objections to the documents identified on your Exhibit List (Defendants' Exhibits 1- 56). As we discussed, there are a few that appear to have some issues caused by the pdf or screen shot processes, so could we get better copies of Exhibits 4, 6, 8, 12, 27, and 30? Some of those seem to not be complete copies or have the top or bottom cutoff.

We're also ready to serve another subpoena specifically directed at General Paxton in his official capacity. Could you please let me know whether you are authorized to accept service? If not, we'll get it served through the process as the OAG tomorrow morning, but I'd like to avoid that if we could.

Finally, Jenny and I will be on the road to Austin for the next few hours, but we're happy to confer again later today to see if we can reach any further agreements about Plaintiffs' Exhibits.

EXHIBIT A/5

Myers, Elizabeth G.

From: Ecklund, Jennifer R.
Sent: Monday, September 26, 2022 8:53 PM
To: Christopher Hilton; Myers, Elizabeth G.; Amy Hilton
Cc: Will Wassdorf; aalbright@adjtlaw.com; Lowell, Allyn J.; Hillier, Sadie; Atkins, John P.; Leif Olson; Kirsten Castaneda
Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

Chris—

We did in fact advise that we would be attempting personal service if you all couldn't accept service, after Amy advised that your office believed service on Friday was insufficient. We even asked if you could tell us where to serve him. We repeatedly tried to **avoid** having to serve your client personally, which I agree would have been preferable. Your staff and client necessitated this, and we even advised that he was evading service before it was ultimately completed, to avoid a result embarrassing to you and your client.

Also, you complained in your Motion to Quash that we had not effectively served your client, requiring us to submit proof of service to the Court.

I am not sure why you believe we have endangered your client when the information was publicly available simply by googling. Nonetheless, we will file a redacted version of the proof of service and contact the clerk's office when they open to withdraw the original filing, which is the only available option to us to address your concerns.

I realize it is late in the day, but I would appreciate if you would cease the accusatory tone—we made repeated efforts on multiple days to avoid any of these issues, and were rebuffed each time. We will proceed as indicated in order to alleviate your concerns.

Jenny

Jenny Ecklund

jecklund@thompsoncoburn.com
P: 972 629 7112
F: 972 629 7171

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Dallas, TX 75201
www.thompsoncoburn.com

From: Christopher Hilton <Christopher.Hilton@oag.texas.gov>
Sent: Monday, September 26, 2022 8:42 PM
To: Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>
Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>
Subject: Re: FTC v. Paxton -- General Paxton is refusing and evading service this morning

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

You never advised us that you would be attempting personal service on the attorney general at his home, and you've now endangered his and his family's personal safety. I had thought you were simply careless but it seems you did so deliberately. I would think common sense is all that's needed, not a local rule.

We'll mark you as opposed to our filing, unless I am misunderstanding your position.

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From: Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>
Sent: Monday, September 26, 2022 8:33 PM
To: Christopher Hilton <Christopher.Hilton@oag.texas.gov>; Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>
Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com <aalbright@adjtlaw.com>; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>
Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

Chris—

We are certainly willing to file a redacted version, my reading of the rules suggests we had no basis (or obligation) to seal anything. I've not found any local or filing rule at issue that was violated after checking again. Since you refused to accept service, as did your client, we had no choice but to file the affidavit of service in order to establish the efforts made and service effected.

I am happy to see if the process server can be available by zoom tomorrow, but obviously we haven't changed our position on the motion to quash since you all have objected to all of the exhibits and statements by your client coming in (and he has been ordered to appear).

Jenny

Jenny Ecklund
jecklund@thompsoncoburn.com
P: 972 629 7112
F: 972 629 7171

Thompson Coburn LLP
2100 Ross Avenue Suite 3200
Dallas, TX 75201
www.thompsoncoburn.com

From: Christopher Hilton <Christopher.Hilton@oag.texas.gov>
Sent: Monday, September 26, 2022 8:19 PM
To: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>
Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>
Subject: Re: FTC v. Paxton -- General Paxton is refusing and evading service this morning

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

You should have done that in the first place. And it's too late to get the filing stricken tonight because the court is closed. We have no choice but to move to seal this filing until you correct this mistake.

Will you have your process server available to testify if we determine that is necessary?

And can we just agree to forego this whole issue in light of the issues we raised in our motion to quash?

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From: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>

Sent: Monday, September 26, 2022 7:57 PM

To: Christopher Hilton <Christopher.Hilton@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>

Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com <aalbright@adjtlaw.com>; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

Chris –

We're happy to redact out the address and refile, assuming you don't oppose that. We also don't oppose a motion by you to redact that specific information but we do oppose a motion to place the entire filing under seal because there is no basis to seal the entire thing.

Elizabeth

Elizabeth G. Myers

emyers@thompsoncoburn.com

P: 972 629 7111

F: 972 629 7171

Thompson Coburn LLP

2100 Ross Avenue Suite 3200

Dallas, TX 75201

www.thompsoncoburn.com

From: Christopher Hilton <Christopher.Hilton@oag.texas.gov>

Sent: Monday, September 26, 2022 7:53 PM

To: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>

Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: Re: FTC v. Paxton -- General Paxton is refusing and evading service this morning

RECEIVED FROM EXTERNAL SENDER - USE CAUTION

As soon as possible, we will be filing a motion to seal your filings that contain the Attorney General's personal address. I hope that this was an unfortunate oversight on your part and that you are unopposed. Please confirm.

Get [Outlook for iOS](#)

From: Christopher Hilton

Sent: Monday, September 26, 2022 12:38:51 PM

To: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>

Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com <aalbright@adjtlaw.com>; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

We do not agree to a preliminary injunction. I look forward to reviewing the evidence of your purported service.

From: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>

Sent: Monday, September 26, 2022 12:37 PM

To: Christopher Hilton <Christopher.Hilton@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>

Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

One more update on service. We received confirmation from our process server that both the personal subpoena and the official capacity subpoena, along with two sets of the required witness fees, were served on General Paxton in Collin County this morning, despite his multiple attempts to evade service. We'll file the affidavits of service as soon as we receive them.

Also, to the extent your client is interested in entering into an agreed preliminary injunction to avoid the necessity of tomorrow's hearing, we are open to that resolution as well. I realized that we did not discuss that possibility in my prior conversations with Will and Amy and I didn't want to not explore that option if it is viable.

Thanks,

Elizabeth

Elizabeth G. Myers

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From: Christopher Hilton <Christopher.Hilton@oag.texas.gov>
Sent: Monday, September 26, 2022 12:29 PM
To: Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>
Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>
Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

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We will be complying with Judge Pitman's order. We are not modifying the position you have quoted and we disagree with your characterization of it. And we are not withdrawing any objections to exhibits.

Thanks,
Chris

Christopher D. Hilton
Chief, General Litigation Division
Office of the Attorney General of Texas
(512) 475-4120

From: Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>
Sent: Monday, September 26, 2022 11:59 AM
To: Christopher Hilton <Christopher.Hilton@oag.texas.gov>; Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>
Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>
Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

Thanks, Chris.

I appreciate you articulating your views—this is why we inquired last week, to avoid any last-minute motion practice. But certainly we oppose any attempt by your office to avoid Judge Pitman's order that all parties and counsel appear in-person tomorrow, especially since it was made two weeks ago and all other parties have made efforts to comply.

However, based on your email, do I understand that the AG is modifying its position below? If that is the case, will you be filing an amended response? Because your response specifically puts jurisdictional facts into dispute:

Plaintiffs' contention that they face an imminent threat of enforcement for helping women procure out-of-state abortions is not based on any statement or action taken by the Attorney General, and their manufactured threats of injury are insufficient to confer them with Article III standing. Moreover, Plaintiffs' claims are barred by sovereign immunity, and Plaintiffs are unlikely to succeed on the merits of their claims. For these reasons alone, Plaintiffs' claims must be dismissed and the Court should deny their Motion for Preliminary Injunction.

Also, please confirm (given your representation that no material facts are in dispute) that your office is withdrawing/foregoing any objections to the exhibits showing statements by Mr. Paxton.

Thanks very much, look forward to seeing you tomorrow.

Jenny

Jenny Ecklund

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From: Christopher Hilton <Christopher.Hilton@oag.texas.gov>

Sent: Monday, September 26, 2022 11:32 AM

To: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>

Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>;

aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie

<SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson

<Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

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Elizabeth,

Your position is meritless. The Attorney General is not obligated to appear personally at any hearing where he is sued in his official capacity, much less to testify. And you cannot establish that his testimony is necessary or appropriate at the hearing tomorrow, even if you were to serve him. There is not a single disputed fact in this matter which requires his testimony.

Unless you are willing to reconsider, we'll simply take it up with the Court. If we file any motions related to these issues, we'll mark you as opposed.

Thanks,

Chris

Christopher D. Hilton

Chief, General Litigation Division
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From: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>
Sent: Monday, September 26, 2022 9:54 AM
To: Christopher Hilton <Christopher.Hilton@oag.texas.gov>; Amy Hilton <Amy.Hilton@oag.texas.gov>
Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>;
aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie
<SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson
<Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>
Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning
Importance: High

Chris –

To be clear there is one subpoena directed to General Paxton in his official capacity, which is the capacity in which he is named in this case. And another subpoena directed to him in his personal capacity given the position Amy and Will conveyed to us yesterday. We are attempting to serve both on him personally now and he is actively evading service. If you want to challenge the subpoenas, that's fine, but General Paxton can't just refuse to be served.

In addition to our subpoenas, General Paxton in his official capacity is also the party and has been ordered to appear by Judge Pitman. Our position is that General Paxton was already obligated to attend the hearing. We have been serving the subpoenas in an abundance of caution to ensure that General Paxton would be present.

Finally, we have made clear our intention to call General Paxton in his official capacity because he is the policymaker for the Office.

If you think it would be meaningful to confer further, I'll give you a call. Otherwise, we'll file the affidavits of service and attempted services and you can raise the issues with Judge Pitman tomorrow.

Best,

Elizabeth

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From: Christopher Hilton <Christopher.Hilton@oag.texas.gov>
Sent: Monday, September 26, 2022 9:45 AM
To: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>; Amy Hilton <Amy.Hilton@oag.texas.gov>
Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>;
aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie
<SHillier@thompsoncoburn.com>; Atkins, John P. <JAtkins@thompsoncoburn.com>; Leif Olson

<Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: RE: FTC v. Paxton -- General Paxton is refusing and evading service this morning

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Elizabeth,

As you know, none of us represent Ken Paxton in his individual capacity with respect to this matter, and we are not authorized to accept a subpoena on his behalf.

I would be happy to discuss this matter and any ways that we could seek an amicable resolution of these issues. But under no circumstances will we agree to have the sitting Attorney General testify in court.

If you are interested in a discussion, feel free to call me. Otherwise we can just litigate these issues.

Thanks,
Chris

Christopher D. Hilton
Chief, General Litigation Division
Office of the Attorney General of Texas
(512) 475-4120

From: Myers, Elizabeth G. <EMYERS@thompsoncoburn.com>

Sent: Monday, September 26, 2022 9:13 AM

To: Amy Hilton <Amy.Hilton@oag.texas.gov>

Cc: Will Wassdorf <Will.Wassdorf@oag.texas.gov>; Ecklund, Jennifer R. <JEcklund@thompsoncoburn.com>; Christopher Hilton <Christopher.Hilton@oag.texas.gov>; aalbright@adjtlaw.com; Lowell, Allyn J. <ALowell@thompsoncoburn.com>; Hillier, Sadie <SHillier@thompsoncoburn.com>; Atkins, John P. <JATkins@thompsoncoburn.com>; Leif Olson <Leif.Olson@oag.texas.gov>; Kirsten Castaneda <kcastaneda@adjtlaw.com>

Subject: FTC v. Paxton -- General Paxton is refusing and evading service this morning

Importance: High

Hi, Amy –

Our process server has located General Paxton at his wife's residence and has attempted to serve him there, but he is refusing to come to the door. I have instructed the process server to remain and continue to attempt service, but at this point General Paxton is actively refusing or evading service. I wanted to let you know of this development and that we'll need to report that to the Court.

We remain happy to serve General Paxton through you, as counsel, of course. I'm also happy to discuss this development by phone as well. Please just let me know a good time to call you.

Thanks,

Elizabeth

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